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IN THE
Supreme Court of the United States
OCTOBER TERM, 1941.

NO. ~~7574~~ 020 23

STATE BANK OF HARDINSBURG,
Petitioner,

vs.

CHANCEY RAY BROWN and MARY G. BROWN,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO
THE PETITION FOR CERTIORARI TO THE
UNITED CIRCUIT COURT OF APPEALS,
SEVENTH CIRCUIT.

SAMUEL E. COOK,
Huntington, Ind.,
Counsel for Respondents.

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**RESPONDENTS' BRIEF IN OPPOSITION TO
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SEVENTH CIRCUIT.**

THE OPINION OF THE COURT BELOW

The opinion of the Court of the Seventh Circuit is reported in 124 Federal (2nd) 701; and a copy thereof is carried into the appendix of the petitioner's brief. This case is based on amended subsection (n) August 28, 1935, was decided right and hence there is no ground for certiorari (11 U.S.C.A. —203 (N.))

JURISDICTION.

The petition is not good. It shows no ground for certiorari. It is conceded by respondents that this court has jurisdiction to issue certiorari in cases where there is a conflict in the decisions; but they contend that this case does not come within that

class and hence certiorari should not be issued. It would be an error to do so.

STATEMENT OF THE CASE.

In its brief (pp. 11-12) petitioner has made a fairly full statement of the case. But it utterly fails to show any conflict with the decisions of other Federal Courts and hence there is no ground for certiorari.

ARGUMENT.

Summary of argument:

1. Whether the respondents timely filed their petition in the court of bankruptcy in order to obtain the relief provided for in Sec. 75 (n) of the Federal Bankruptcy Act as amended in 1935 should be determined by the Federal law, and not the prior Statutes of Indiana. The petition herein was filed under the Federal Law before the deed was delivered. The Statutes of Indiana have nothing to do with the question.

2. Under the Federal law, as amended, the respondents were given the right to file their petition for the relief asked at any time before the confirmation of the sale on foreclosure proceedings, or before the delivery of the deed to the purchaser. (11 U.S. C.A. 203 (N.))

3. The conceded fact that at the time the respondents filed their petition no deed had been delivered to the purchaser-petitioner herein-operated to give the bankruptcy court jurisdiction over the property in controversy.

4. The language of the statute, as amended, too plainly states that in such cases the distressed

farmers may file the petition for the relief even after the sale of the property at any time either before the confirmation of the sale or the delivery of the deed to the purchaser, to fairly admit of any different construction.

5. In holding that the provisions of Sec. 75 (n) gave the bankruptcy court jurisdiction over the property in question, the Seventh Circuit followed both the letter and the spirit of the Act; and the interpretation thereof by this court as evidenced by the opinions cited.

6. The several decisions by other Circuit Courts cited in the petitioner's brief, and claimed to be in conflict with the decision of the Seventh Circuit in this case, were not based on analogous facts and statutory provisions.

The petitioner contends that under the statutory laws of Indiana, as construed by the State courts, the respondents had no right in or title to the lands in controversy, and, therefore, they were not entitled to ask the relief provided for by the Federal statute relied upon. This argument proceeds upon the theory that it was not within the power of Congress to authorize the filing of a petition for such relief after the sale of the property in the foreclosure proceedings, even though no deed had been executed to the purchaser. It is urged that after the sale of the property there remained no right of redemption, under the State statute, and nothing remained to complete the title in the purchaser except execution and delivery of the deed. Congress had the power to extend the period for filing until

the deed was delivered. *Wright vs. Union Central* 304 U.S. 502. Same in Supreme Court Reporter Vol. 58—p. 1032-33.

This line of argument seemingly overlooks the plenary power of Congress over the subject of bankruptcy. It was one of the purposes of the Federal enactment to make uniform throughout the various jurisdictions, the rules and practices in bankruptcy. If the laws of a given state make no provision for the redemption of property sold on execution or decretal order, nor for the confirmation of any such sale, or the execution and delivery of a deed to the purchaser, the infirmity is in the state law, which must yield to the paramount law of the Federal government.

The mortgage here involved was executed after the enactment of the amendatory legislation; and just as the laws of a state are carried into contracts executed after making of such laws, so the Federal statutes pertaining to matters within the exclusive jurisdiction of the Federal Government, are, by their own force, carried into the body of the state laws, making them yield wherever a conflict exists.

"The mortgage contract was made subject to constitutional power in the Congress to legislate on the subject of bankruptcy. Impliedly this was written into the contract between the petitioner and the respondent. Not only are existing laws read into contracts in order to fix obligations between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order." *Ibid* p. 1033.

In Conclusion; The exercise of the supervisory

power vested in the Supreme Court to revise and review the decisions of the inferior Federal Courts is not exercised except in special cases where there is a conflict in the decisions or some one of the reasons given in Rule 38. No such situation has been shown to exist by the decisions cited in the petitioner's brief in this case. The petition does not bring the instant case within certiorari.

For the reasons stated the respondents respectfully pray that the petition be denied.

Respectfully submitted,

✓ SAMUEL E. COOK,
Huntington, Indiana,
Counsel for Respondents.

✓ ULYSSES S. LESH,
Huntington, Indiana,
of Counsel for Respondents.